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COURT OF CRIMINAL APPEALS
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COURT OF CRIMINAL APPEALS
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To the Court of Criminal Appeals of the State of Texas

STATE OF TEXAS,
Appellant

v.

RICARDO MATA,
Appellee

APPEAL FROM HIDALGO COUNTY
APPELLATE CAUSE NUMBER 13-17-00494-CR
TRIAL CAUSE NUMBER CR-2611-16-B

APPELLEE'S BRIEF

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ORAL ARGUMENT REQUESTED

IDENTITY OF JUDGE, PARTIES, AND COUNSEL

The parties to the trial court's judgment are the State of Texas and Appellee, Ricardo Mata.

The trial judge was Hon. Rodolfo Delgado, Presiding Judge, 93rd District Court, Hidalgo County, Texas.

Counsel for Appellee at trial was O. Rene Flores, 208 W. Cano Street, Edinburg, Texas 78539, and Rogelio Solis, P.O. Box 2307, Edinburg, Texas 78540.

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CASELAW

STATEMENT REGARDING THE RECORD

The record in this appeal includes a 1-volume clerk's record, and a 5-volume reporter's record.

The clerk's record will be cited as "CR[page]," the supplemental clerk's record will be cited as "Supp.CR[page]." The reporter's record will be cited as "RR[volume] @[page] or "RR[volume]@[exhibit#]" where applicable.

Appellee's Brief on the Merits

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

The 13th Court of Appeals ruled that the "Public Safety" exception to the *Miranda*[1] warnings does not apply beyond the safety of officers and the public on scene, and therefore did not apply to questioning about the location of a victim elsewhere.[2]

STATEMENT OF THE CASE

[1] *Miranda v. Arizona*, 384 U.S. 436 (1966)

[2] State v. Mata, No. 13-17-00494-CR, 2019 WL 3023318, at *4 (Tex. App. July 11, 2019), petition for discretionary review granted (Sept. 18, 2019) "Because the exception is a narrow one, and it has only been used in situations involving the use of guns, we decline to create an exception here that may lessen the clarity of the *Miranda* rule."

Appellee was charged with aggravated kidnapping, human trafficking, and sexual assault of a child.[3] After surveillance by police, defendant was pulled over and interrogated on the side of the road as to "where the girl was" without first being mirandized.[4] The trial court ruled that his improper detention, and questioning at the scene, followed by the interrogation at the station later that day, were improper and ruled to suppress the statements made by Appellee.[5]

The State appealed the Court's ruling arguing the "Public Safety" doctrine, and the 13th Court of Appeals affirmed in part and reversed in part. The State's Petition for Discretionary Review arises out of the affirmation that the "Public Safety" exception did not apply to this improper roadside interrogation without *Miranda*.

After the State's appeal, but before the ruling of the 13th Court, Appellee by and through his counsel reached a plea agreement with the State's prosecutors. Appellee was placed on deferred community supervision for sexual assault of a child, and the other two indicted offenses were dismissed.[6] After the State's Petition for Discretionary Review was granted to be heard, Appellee argued the

[3] CR 5, 6
[4] CR 20 – 22, RR2 MTS Hearing
[5] CR 120 – 126
[6] See *NOTICE OF TRIAL COURT'S ORDER* Filed in Cause No. PD-0810-19 4/16/21 at page 1

point was in fact moot, because of a lack of conflict between the parties. However, the State's prosecuting attorneys filed a motion to vacate the "null" judgments, and Appellee was removed from probation, this case is once again pending.[7]

ISSUE PRESENTED

The 13th Court of Appeals did not err when refusing to apply a narrow *Miranda* exception to questioning regarding victims of cases involving no weapons.

STATEMENT OF FACTS

Police investigators, under the guise of being related to a minor's mother, made contact with a man identified, telephonically, as "El Guero."[8] After "pinging" the suspects phone, authorities surveilled a house which was seen to have a vehicle leaving location along with a matching "ping." After police were informed that the target cellphone was running low on battery, officers conducted a traffic stop on the vehicle.[9] Appellee, who was the driver of said vehicle, was immediately asked for the location of the girl, without being properly *Mirandized*.[10] After making

[7] See *Id*., at page 3
[8] RR2 @ 30, 45, and 46
[9] RR2 @ 8 and 27
[10] *Miranda v. Arizona*, 384 U.S. 436 (1966)

inculpating roadside statements, officers took Appellee to the police station where he was *Mirandized,* and a written state of accused was obtained.[11]

After the motion to suppress hearing, the trial court ruled in favor of suppressing both the roadside, and the station comments made by Appellee.[12] On appeal the 13th Court of Appeals, ruled that the "Public Safety" exception applied to cases concerning guns or weapons being involved that pose a threat to the safety of the public, and refused to extend that exception so as to not "*lessen the clarity*" of the *Miranda* rule.[13]

SUMMARY OF THE ARGUMENT

The 13th Court of Appeals along with all her sister courts in the State of Texas, have rendered opinions about the *Quarles* exception, specifically when the facts of the cases involve immediate danger and weapons that pose a threat to police, and the immediate public. Expanding the narrow exception would be a slippery slope that is not necessary to create because of other resources available to police.

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[11] RR2 @ 56

[12] CR 120 – 126

[13] *State v. Mata*, No. 13-17-00494-CR, 2019 WL 3023318, at *4 (Tex. App. July 11, 2019), petition for discretionary review granted (Sept. 18, 2019) "Because the exception is a narrow one, and it has only been used in situations involving the use of guns, we decline to create an exception here that may lessen the clarity of the *Miranda* rule."

ARGUMENT

The *Quarles* "Public Safety" exception was a narrowly tailored one, revolving around keeping officers and the immediate public safe, where an arrest or detention and suspicions of a weapon were afloat. [14] In *Quarles*, beyond the need to protect an accused's right against self-incrimination, by and through the application of *Miranda*'s prophylactic warnings, the court felt that safety of the marketplace and its patrons superseded the accused's rights.[15] However, the *Quarles* Court itself acknowledged the niche exception it was creating and recognized that the exception would be considered a "narrow" one.[16] Further, they emphasize their belief that officers will be able to instinctively distinguish between questions that are necessary to secure their own safety, as well as that of the *public*, from those questions that are designed to elicit testimonial evidence from a suspect.[17]

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[14] *New York v. Quarles*, 467 U.S. 649, 655, 104 S. Ct. 2626, 2631, 81 L. Ed. 2d 550 (1984) "We hold that on these facts there is a "public safety" exception to the requirement that *Miranda* warnings be given before a suspect's answers may be admitted into evidence"

[15] See *Id*., "So long as the gun was concealed somewhere in the supermarket, with its actual whereabouts unknown, it obviously posed more than one danger to the public safety: an accomplice might make use of it, a customer or employee might later come upon it."

[16] See *Id*., "In recognizing a narrow exception to the *Miranda* rule in this case, we acknowledge that to some degree we lessen the desirable clarity of that rule"

[17] *New York v. Quarles*, 467 U.S. 649, 658–59, 104 S. Ct. 2626, 2633, 81 L. Ed. 2d 550 (1984) "The exception will not be difficult for police officers to apply because in each case it will be circumscribed by the exigency which justifies it. We think police officers can and will distinguish

In the case at hand, the State is attempting to broaden the narrowly tailored exception of the *Quarles* case, by aggressively categorizing victims of human trafficking and kidnapping with a general definition of the "Public," which was the original beneficiary of the *Miranda* Exception. Additionally, the State is attempting to sway this court that the exception is not limited to guns and weapons only, as it was construed by the 13th Court of Appeals.[18]

The reasoning behind the need to locate or secure dangerous weapons was the underpinning of the exception at its inception. The *Quarles* court weighed the likelihood of a person stumbling upon the unholstered weapon, and causing harm to themselves or others, with the need for a prophylactic protection against self-incrimination.

If this court were to look at decisions from around the State, the Court of Appeals – Corpus Christi has ruled in accordance with her sister courts. Take for example the ruling from the Court of Appeals – Texarkana, in *Price v. State*.[19] The *Price* court had to determine if statements made by an angry, yelling, bar patron

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almost instinctively between questions necessary to secure their own safety or the safety of the public and questions designed solely to elicit testimonial evidence from a suspect."

[18] *State v. Mata*, No. 13-17-00494-CR, 2019 WL 3023318, at *4 (Tex. App. July 11, 2019), petition for discretionary review granted (Sept. 18, 2019) "has only been used in situations involving the use of guns"

[19] Price v. State, No. 06-19-00011-CR, 2019 WL 6598671, at *4 (Tex. App. Dec. 5, 2019)

regarding the location of a firearm he had in his vehicle, which wasn't even alleged to have been used in the commission of a crime, would be admissible after officers "at gunpoint" had to remove Price from his vehicle. Exchanges about him having a gun were made aloud, without the proper *Miranda* warnings prior to, but after Price yelled out that he wanted "his lawyer."[20]

This court can also look at the Court of Appeals – San Antonio, specifically their decision in *Miller v. State*.[21] The San Antonio Court weighed the necessity of officers asking questions with out *Miranda*, to determine that a knife that had just been used, was secured and their safety could be maintained. The Court reiterated the need to have this "*narrow*" exception in order to protect the "Public safety" of the officers on scene.[22] Furthermore, the *Miller* Court admitted questions regarding

[20] See *Id*., "The trial court ruled that Price was in custody when the officers removed him from the car at gunpoint because under those circumstances, a "person would not believe they were free to leave." "But the trial court refused to suppress Price's statements about the gun, finding that they were admissible under the public safety exception to *Miranda*. The public safety exception acknowledges that within narrow circumstances, the threat to the safety of officers outweighs *Miranda* protection. *New York v. Quaerles*, 467 U.S. 649, 655–57 (1984). Price argues that the trial court erred because his statements were made in response to the officers' questioning after he had invoked his right to counsel."

[21] *Miller v. State*, No. 04-14-00041-CR, 2015 WL 3775097, at *2 (Tex. App. June 17, 2015)

[22] *Miller v. State*, No. 04-14-00041-CR, 2015 WL 3775097, at *2 (Tex. App. June 17, 2015) "With regard to Miller's statement regarding the location of the knife, the trial court concluded the officers' questions were informal questions relating to the safety of the officer and were not custodial interrogation. The public safety exception recognizes that in narrow circumstances, the threat to the safety of the officers outweighs the need for giving the *Miranda* warnings. *New York v. Quarles,* 467 U.S. 649, 655–57 (1984);"

any other weapons or items that might hurt the officers on scene[23], giving more weight to Appellee's argument that the *Quarles* exception does not stretch beyond members of the police or the immediate public.

The Court of Appeals – Beaumont, in its decision *Solis-Casares v. State,* also applied the "Public Safety" exception to a situation where a defendant walked into a police substation and indicated with hand gestures and broken English, that a weapon was used in a case in "Conroe." Those gestures prompted police to contact Houston authorities and ask Solis-Casares where the gun was, since he was not carrying one with him. The Beaumont Court ruled that because there was a mention of a weapon, the questions regarding it were to be admitted.[24] In this

[23] See *Id*., "Under the facts in this case, we hold the trial court did not err in applying this exception to the question Officer Woodard posed regarding the location of the knife or the question Officer Morgan asked regarding whether Miller was in possession of anything that could stab her. Both questions were reasonably prompted by a concern for the officers' safety. *See Quarles,* 467 U.S. at 656–57."

[24] *Solis-Caseres v. State*, No. 09-13-00580-CR, 2015 WL 993476, at *4 (Tex. App. Mar. 4, 2015) "At the conclusion of the suppression hearing, the trial court heard arguments from the attorneys on behalf of both parties. The State argued that the statements made by Noel at the Houston substation should not be suppressed. In particular, the State argued that the statements Noel made when he first entered the substation and when he made a hand gesture and statement about "Conroe" were noncustodial in nature. Additionally, the State argued that the statements and questions about the location of the gun would fit within the public safety exception as outlined in *New York v. Quarles*."

circumstance the Beaumont Court also weighed the safety of children and citizens in the vicinity of where the weapon was disposed, like the *Quarles* Court.[25]

Courts of Appeals in both Houston and Forth Worth have also had to make decisions regarding *Miranda*-less questioning of defendants, and in both cases relied on the weapon and officer safety aspects of *Quarles* to allow the statements. The Houston Court in *Durham v. State* was tasked with weighing credibility of a veteran officer who testified that he only asked for the whereabouts of a gun, because it would be morning soon, and children may find the gun that the defendant had stashed in his trashcan.[26] And in *Bryant v. State*, the case relied upon

[25] *Solis-Caseres v. State*, No. 09-13-00580-CR, 2015 WL 993476, at *2 (Tex. App. Mar. 4, 2015) "After finding no weapon on Noel, and before anyone read a Miranda warning to Noel, Officer Mendoza asked Noel where the gun was located. Noel told Officer Mendoza that he had thrown it in a dumpster at an apartment complex. Officer Mendoza testified that he asked Noel questions regarding the gun's location because he "want[ed] to secure the weapon, secure evidence," and because "kids could get it, someone could be hurt." Officer Mendoza explained that the apartment complex where Noel said he disposed of the gun housed many children and there was a school and another apartment complex in close proximity. According to Officer Mendoza, he did not ask Noel any questions about the murder."

[26] Durham v. State, No. 14-18-00152-CR, 2021 WL 208875, at *5 (Tex. App. Jan. 21, 2021), petition for discretionary review refused (Apr. 21, 2021) "The "public safety" exception exempts from *Miranda* those situations in which an officer has reason to believe that immediate and summary questioning is necessary to protect members of the public from serious harm. *Quarles*, 467 U.S. at 656."
See also *Id*., "At the suppression hearing, Sergeant Wolfford testified that he wanted one specific question answered: the location of the gun. Sergeant Wolfford stated that he did not read appellant his *Miranda* warnings "[b]ecause of the exigency of the situation, that I believed that there was a firearm that was out in that neighborhood. The day was July 4th. It will be daylight soon. And I was concerned that a child would find that gun in the morning in the front yard of somebody's — somebody's residence."

by the State in their original appeal to the 13th Court of Appeals, the Fort Worth Court of Appeals ruled that statements in response to questions about weapons and potential codefendants fell under the "Public Safety" exception because of the need to lock down weapons and ensure officer safety.[27]

All these sister courts have continuously applied the "Public Safety" exception in situations where police safety and the safety of the immediate public were in danger. Arguing that the 13th Court of Appeals erred by reading the exception as a "weapons" exception, would fly in the face of the overarching statewide understanding of the current rule.

Attempting to stretch the "Public Safety" exception specifically to cases of human smuggling or kidnaping becomes improper and has been considered by the 9th Circuit Court of Appeals in *United States v. Torres-Gallegos*.[28] The *Torres-Gallegos* Court considered whether to allow statements made in response to questions about how many people were being smuggled in a tractor trailer cabin. There, the Court in discussing the *Quarles* exception, determined the exception

[27] *Bryant v. State*, 816 S.W.2d 554, 557 (Tex. App. 1991) "Also, we note that at the time in question the officer was looking for someone who might be armed with a weapon and who had just shot the deceased. We hold therefore that the officer was not required to advise Bryant of his rights under *Miranda* on this occasion because of the public safety exception to *Miranda* as recognized in *New York v. Quarles,* 467 U.S. 649, 104 S.Ct. 2626, 81 L.Ed.2d 550 (1984)."

[28] *United States v. Torres-Gallegos*, No. CR1903105TUCJCHBGM, 2021 WL 1232659, at *3 (D. Ariz. Apr. 2, 2021)

revolves around officer safety and a weapon. They distinguished their case because the victims had been located through an x-ray search, and the officers asked simultaneously.[29] Similar to our case, where the police asked questions about the location of the victim of a crime, not when the situation first began but once they had taken their time and investigated the case somewhat, therefore disrupting the exigency of the questions.

Additionally, it would be improper to broaden the scope of the *Quarles* exception when, like the State argues, we already have mechanisms in place to secure searches or to allow for action, when the circumstances have become exigent. For example, when a pursuit has become exigent, and police can therefore proceed further than normal to apprehend a fugitive.[30] Or similarly, when police have reason to believe that a person is presently in danger and the circumstances require immediate action, they are allowed to (without a warrant) enter a premises

[29] See *Id*., "Here, the Government argues that "[t]he safety of people being smuggled was the pertinent issue, and therefore, the public safety exception applies." Govt.'s Response (Doc. 84) at 3–4. This argument is without merit. The agents had already x-rayed the tractor-trailer and, based on the anomalies detected, found four (4) individuals. Furthermore, BPA Cameron's question was "investigatory and sought to elicit testimonial evidence[,] ... [it was] not aimed at controlling an immediate threat to public safety." *Brady*, 819 F.2d at 888. Accordingly, the public safety exception does not apply, and Defendant's statement should be suppressed."

[30] Yeager v. State, 104 S.W.3d 103, 107 (Tex. Crim. App. 2003) "Under the "hot pursuit" doctrine, the relevant consideration in this case is whether the initial "pursuit" was "lawfully initiated on the ground of suspicion."

See also; Santana, 96 S.Ct. at 2410 ("a suspect may not defeat an arrest which has been [lawfully] set in motion in a public place ... by the expedient of escaping to a private place")."

to provide aid, under those exigent circumstances.[31] In the present case, however, the exigency was not present, and the officers instead were in the process of gathering more than just rescue information, but also testimonial evidence.

CONCLUSION

The Court should find that the 13th Court of Appeals did not err in its interpretation of the *Quarles* "Public Safety" exception. The narrowly tailored exception should not apply in situations without the involvement of weapons, officer safety, and the immediate danger of the public as a whole. Bootstrapping victim safety, and the rescue doctrine to the *Quarles* exception, would create a slippery slope where officers would be able to gather testimonial evidence without the protections of *Miranda*, by merely articulating the necessity to find a victim, regardless of the actual threat of a gun, or any other weapon posing a threat to the general public.

[31] *Mincey v. Arizona*, 437 U.S. 385, 392, 98 S. Ct. 2408, 2413, 57 L. Ed. 2d 290 (1978) "We do not question the right of the police to respond to emergency situations. Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid."

PRAYER FOR RELIEF

Appellee prays that the Court of Criminal Appeals affirms the 13th Court of Appeals and the Trial Court's suppression of the roadside statements.

Respectfully Submitted,

O. Rene Flores, PC

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I hereby certify that on April 30, 2021, a true and accurate copy of the foregoing Appellee's Brief was served in accordance with the rules on the following persons:

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CERTIFICATE OF COMPLIANCE

Pursuant to TRAP 9.4(3), I hereby certify this Brief contains 3934 words.

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